Writ of Certiorari was denied here without a summary disposition on the merits, an application of law that is not equitable or final. "Federal bankruptcy courts have held that a debtor in possession owes a *fiduciary* duty to both the estate and the court. This *fiduciary* duty includes a duty to disclose all known material." TENN-FLA, a partnership, v. First Union National Bank of Florida, as trustee, US D.Ct. for W.D. of Tennessee, W.D., 229 B.R. 720; 1999. If affirmed, this order will not effect justice, as:

1) Lower courts in Tennessee protect disclosure rights of unsecured creditors; while,
2) lower courts in Pennsylvania elect not to protect disclosure rights of a spouse in the dissolution of marriage, waiving jurisdiction.

State courts failed to enforce the *fiduciary* duty, of attorneys, as officers of the court: 1) No interim QDRO was filed or enforced; 2) a *hearsay* counsel stipulation was accepted as evidence; 3) stipulating counsel was permitted to withdraw without entering Petitioner's QDRO two years after stipulation at trial. Undisputed complaint allegations that Respondents breached fiduciary duties in violation of the law were not construed in Petitioner's favor.

Pennsylvania judges and the lower federal courts, here, failed to enforce Petitioner's statutory right to asset information within the possession and control of Bosick, a 14th amendment violation. They issued orders permitting Bosick to exclude 401k contributions, absent evidence; unanimously denying Petitioner's 401k appeals. Bosick wrote a personal check to an annuity company in 2003, pursuant to the QDRO. This creates ambiguity about Petitioner's tax liability for those funds. Employer provided a 403(a) plan summary to DRO, stating it's not ERISA plan.

It is unconscionable that disclosure rights in divorce did not receive the same federal protection that lower federal courts afford unsecured creditors. "Fraud on the court" has been defined as "a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." TENN-FLA *citing* Harbold v. Commissioner, 51 F.3d 618,622 (6th Cir. 1995). In the context of revoking an order of confirmation under sec.1144, this can be restated as requiring:

1) a representation by debtor regarding compliance;

2) which was materially false;

3) that was either known by the debtor to be false, or was made without belief in its truth, or was made with reckless disregard of truth;

4) that was made to induce the court to rely on it;

5) that the court did rely upon; and

6) that as a consequence of such reliance, the court entered the confirmation order.

TENN-FLA, *see* In re Longardner & Associates, Inc., 855 F.2d at 462 n.6 (Chapter 13); Perdido Motel Group, 142 B.R. at 464. In actions to revoke a bankruptcy order, courts have examined the disclosures of a party with the duty disclose for fraudulent omissions. See e.g. In re Circle Corp., 181 B.R. 457, 463-65 (Banker D.Ariz. 1995), *et al.*

The courts have determined fraudulent intent can be shown where "a person who: 1) is obliged to disclose, 2) knows of the existence of material information, and 3) does not disclose it." In re Giguere, 165 B.R. at 534, *quoting* In re Michelson, 141 B.R. at 725). A broader examination of a plan proponent's conduct is based on good reason. The integrity of the confirmation process is dependent on a plan proponent's honest compliance." TENN-FLA at 725. The Sixth Circuit has relaxed requirements for finding of fraud on the court and has indicated a willingness to examine a party's withholding of information for fraud. *See* Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993) (finding Justice Department attorneys reckless in their failure to disclose information to the other party or to court). "The test for fraud under section 1144 can be restated to account for a party's non-disclosure as follows:

1) an intentional omission;

2) by a party with a duty to disclose;

3) of facts that would be material to finding the party complied with section 1129;

4) that were withheld so that the court would find the party complied with section 1129;

5) and that as a consequence of non-disclosure, the court entered the confirmation order."

TENN-FLA at 726. A party's duty to disclose is a question of law. Id. at 730. *Fiduciary* duty of Respondents was alleged and undisputed here.

The good faith requirement of sec. 1129 will be met if the plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code. Good faith requires fundamental fairness in dealing with one's creditors." Id. at 735. Allegations that Respondents acted in bad faith are undisputed.

"The dangers resulting from the concealment of assets are greater when a party [the debtor] remains in possession than in cases in which a third party acts as trustee." Id. at 745. " If a debtor in possession were permitted to omit claims in bankruptcy court and later assert title to them, there might be an inducement to do so, to the prejudice of creditors' interests. Such a rule would undermine the *fiduciary* status of the debtor in possession." Id.745. Bosick controls assets.

District court found all elements of the test for fraud upon the court via non-disclosure under sec. 1144 were met and affirmed the Bankruptcy Court revocation of its prior confirmation of the TFP plan. The court sanctioned the party breaching its *fiduciary* duty, awarding attorneys fees and expenses incurred. "While ordinarily an award of attorney fees is authorized by contractual or statutory authority, an exception exists where fraud has been practiced upon the court." Id.747 *citing* Chambers v. NASCO, 501 U.S. 32, 46 (1991), *citing* Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580 (1946). A reasonable person would expect courts to enforce Petitioner's right to disclosure in divorce litigation.

The courts have a fiduciary duty to protected persons in the dissolution of marriage, which must be enforced equitably with practices enforcing disclosure rights of unsecured creditors in bankruptcy. Here, the spouse in possession of undisclosed assets breached *fiduciary* duty as officer of the court and *plan* trustee.

Conclusion

The Supreme Court of the United States requested a response from Respondents within a specific time. Respondents filed Waiver without making R.29.6 corporate disclosure to this court.

WHEREAS, Petitioner experienced judicial *bias,* unsupported by evidence of record, Petitioner requests enforcement of R.29.6 disclosure, to screen conflicts and to ensure an impartial tribunal here.

WHEREIN the alternative, Petitioner requests this court to construe undisputed allegations / Waiver adverse to Respondents; find breach of *fiduciary* duty and issue declaratory relief comparable to courts that protect disclosure rights of unsecured creditors in bankruptcy, to satisfy notice requirements of the due process clause and to equitably enforce the law.

WHEREAS no due process finality has been achieved here, Petitioner requests application of the Exxon federal waiver limitations and preclude waiver.

WHEREIN the alternative, Petitioner requests an order for summary disposition on the merits.

Appellate failure to enforce the law may be widespread, as the 2005 judicial retention election of two state Supreme Court Justices resulted in removal of one and a 54% retention of the other.

WHEREAS all respondents are officers of the court, Petitioner requests this court to fully consider Respondents' undisputed breach of *fiduciary* duty, undisputed unjust enrichment, and remand to the jurisdiction of state court for professional discipline.

Respectfully submitted,

Mary Ellen Chajkowski, Petitioner *Pro se*